



# CITY ATTORNEY DENNIS HERRERA NEWS RELEASE

FOR IMMEDIATE RELEASE

TUESDAY, JULY 12, 2011

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## Wage theft lawsuit seeks to recover \$440K in back pay, interest for cheated workers

***Dick Lee Pastry paid well below minimum wage, demanded long hours  
with no overtime, falsified payroll records, retaliated against workers***

SAN FRANCISCO (July 12, 2011)—City Attorney Dennis Herrera today sued Dick Lee Pastry, Inc. and its owners and operators for violating state and local laws intended to ensure minimum wages, overtime compensation, and lawful competition by failing to pay more than \$440,000 in wages plus interest to seven of their employees. The litigation comes as the result of an investigation by San Francisco’s Office of Labor Standards Enforcement under the direction of Division Manager Donna Levitt. Also named as defendants in the lawsuit are Peter Yu and Ada M. Chiu, who own the restaurant at 716 Jackson Street.

Herrera’s lawsuit, which was filed in San Francisco Superior Court today, seeks to recover compensation for the cheated workers that would include all unlawfully withheld wages, plus ten-percent interest, plus penalties of \$50 per day for the duration of their employer’s wage violations. Herrera is additionally seeking penalties of \$50 per day per employee as compensation to OLSE under San Francisco’s Minimum Wage Ordinance; potentially severe civil penalties under California’s Unfair Competition Law; and attorneys’ fees and costs associated with the action.

“Robbing employees of wages to which they’re entitled doesn’t just hurt working families—it also hurts honest businesses and their employees by corrupting a competitive marketplace,” said Dennis Herrera. “Dick Lee Pastry stands out even among the most egregious perpetrators of wage theft in San Francisco. They paid wages well below the legal minimum, demanded long hours with no overtime, instructed workers to lie to labor investigators, and retaliated against those who sought to protect their rights. I hope today’s lawsuit sends a strong message to other would-be wage cheats about the seriousness of our resolve to protect working men and women in San Francisco. I applaud the Office of Labor Standards Enforcement for their investigation of this case, and I’m grateful to the Chinese Progressive Association for their community outreach efforts.”

“The law requires that restaurant workers be paid at least the minimum wage for every hour worked, but Dick Lee Pastry paid workers a monthly salary that amounted to less than half of the City’s minimum wage rate. This is wage theft and it will not be tolerated in San Francisco,” said Donna Levitt. “The Office of Labor Standards Enforcement is here to vigorously investigate and enforce our City’s minimum wage law and create a level playing field for law abiding businesses. I commend City Attorney Dennis

[MORE]

Herrera and his deputies for filing this lawsuit today and appreciate the work of the Chinese Progressive Association who brought this claim to our attention.”

“Today’s legal action sends a clear message: San Francisco will not tolerate employers who steal from their workers,” said Shaw San Liu, lead organizer of the Chinese Progressive Association’s Worker Organizing Center. “The wage theft crisis is crippling our local economy, not just in Chinatown but across San Francisco. We applaud the courage of the workers who first came forward to CPA, and all the workers who are now speaking out. If you are a worker and you think you may be getting cheated, or simply want to learn more about your rights, we welcome you to come to CPA for confidential information and assistance.”

The seven wage theft victims described in the City Attorney’s complaint worked at Dick Lee Pastry for periods ranging from more than a decade to less than a year. All worked six-days per week, with shifts spanning eleven to fourteen hours per day. Despite the considerable overtime the employers demanded of their workers, however, none received overtime or double-time compensation as required by law. The cheated employees received semi-monthly wages of approximately \$550, averaging between \$3.02 and \$3.91 per hour. San Francisco’s current minimum hourly wage is \$9.92.

OLSE initiated its investigation on the basis of a complaint referred from the Chinese Progressive Association in late 2009, after which City investigators notified the defendants in writing that it was investigating possible violations of San Francisco’s Minimum Wage Ordinance. Yu and Chiu took immediate steps to obstruct the investigation, according to the complaint, retaliating against employees who were cooperating with the OLSE by dramatically reducing work hours to below full time, and immediately firing one employee who also worked as a live-in maid to the defendants. Yu and Chiu had previously fired a live-in maid and restaurant worker after she traveled to China to be with her sick mother.

The City’s complaint against Dick Lee Pastry additionally details a pattern of deceptive payroll practices, in which Yu and Chiu provided employees with copies of three-hour work schedules with instructions to inform government inspectors that the document accurately represented the time they had worked. Defendants paid only three hours per day by check at San Francisco’s minimum wage, with remaining amounts paid in cash. Apart from paying their employees well below the minimum wage and refusing to pay overtime or double time when required, Yu and Chiu paid employees in a manner that deliberately concealed the true number of hours employees worked, according to the City Attorney’s complaint.

In November 2003, San Francisco voters passed the Minimum Wage Ordinance (S.F. Admin. Code, Ch. 12R) to provide for annual rate adjustments based on the previous year’s Consumer Price Index for urban wage earners in the San Francisco-Oakland-San Jose metropolitan area. Historical MWO Wage Rates have been: \$8.82 per hour in 2006; \$9.14 per hour 2007; \$9.36 per hour 2008; \$9.79 per hour 2009; \$9.79 per hour 2010; and \$9.92 per hour in 2011. For more information about San Francisco’s Minimum Wage Ordinance, members of the public may call the City’s multi-lingual hotline at (415) 554-6292, or email [MWO@sfgov.org](mailto:MWO@sfgov.org). Wage theft victims may also seek confidential assistance from the following organizations: Chinese Progressive Association at (415) 391-6986; Filipino Community Center at (415) 333-6267; La Raza Centro Legal at (415) 575-3500; and Pride At Work at (415) 410-7462.

The case is: *City and County of San Francisco et al. v. Dick Lee Pastry, Inc. et al.*, San Francisco Superior Court, filed July 12, 2011.

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9

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 COUNTY OF SAN FRANCISCO

12 UNLIMITED JURISDICTION

13 CITY AND COUNTY OF SAN  
FRANCISCO, a municipal corporation, and  
14 THE PEOPLE OF THE STATE OF  
CALIFORNIA, by and through DENNIS J.  
HERRERA, CITY ATTORNEY FOR THE  
15 CITY AND COUNTY OF SAN  
FRANCISCO,

16 Plaintiffs,

17 vs.

18 DICK LEE PASTRY, INC; KWOK  
19 WING YU AKA PETER YU; ADA  
MILIN CHIU AKA ADA M. CHU; AND  
20 DOE ONE THROUGH DOE TEN,  
INCLUSIVE,

21 Defendants.  
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Case No.

**COMPLAINT FOR UNPAID WAGES,  
RESTITUTION, PENALTIES, AND  
INJUNCTIVE AND OTHER RELIEF**

Type of Case: (15) Other Employment

1 The CITY AND COUNTY OF SAN FRANCISCO ( the "CITY") and the People of the State  
2 of California ("the PEOPLE"), by and through DENNIS J. HERRERA, City Attorney for the City and  
3 County of San Francisco (collectively "Plaintiffs"), for their Complaint against Dick Lee Pastry, Inc.,  
4 Kwok Wing Yu, aka Peter Yu ("YU"), Ada Milin Chiu, aka Ada M. Chu ("CHIU"), and Does 1-10  
5 (collectively "Defendants"), hereby allege as set forth below:

## 6 INTRODUCTION

7 1. This action arises out of the Defendants' operation of Dick Lee Pastry, a restaurant in San  
8 Francisco, in violation of state and local law governing minimum wages, overtime and double time  
9 compensation requirements, and engaging in unfair and unlawful business practices, by failing to pay  
10 their employees more than \$440,000 in wages and interest.

11 2. From April 1, 2005, until at least November 30, 2009, Defendants failed to pay their  
12 employees minimum wages as required by Section 12R.4 of the San Francisco Minimum Wage  
13 Ordinance ("MWO"). Defendants also have failed to pay their employees minimum wages as  
14 required by California Labor Code Section 1197 and the California Industrial Welfare Commission  
15 Wage Order 5-2001, Section 4 ("Wage Order 5-2001"). Further, Defendants have failed to pay their  
16 employees overtime and double time compensation as required by Labor Code Section 510 and Wage  
17 Order 5-2001, Section 3. These actions constitute unfair and unlawful business practices in violation  
18 of California Business and Professions Code Section 17200, *et seq.* These unfair and unlawful  
19 business practices deny Defendants' workers their rights to their hard-earned wages, harm competing  
20 businesses that abide by the State and Local wage and hour laws, and encourage other business  
21 owners to ignore their legal obligations to pay the required wages.

## 22 PARTIES

23 3. This action is brought on behalf of the People of the State of California by and through  
24 Dennis J. Herrera, City Attorney for the City and County of San Francisco, and the City and County  
25 of San Francisco.

26 4. The City and County of San Francisco brings this action pursuant to the San Francisco  
27 Administrative Code Sections 12R.7(c) and 12R.14. The People of the State of California bring this  
28 action pursuant to Business and Professions Code Section 17204.

1           5. Plaintiffs are informed and believe, and on that basis allege, that DICK LEE PASTRY,  
2 INC., is, and at all relevant times was, a corporation organized under the laws of the State of  
3 California, engaged in the restaurant business within the boundaries of the City and County of San  
4 Francisco, and is located at 716 Jackson Street, San Francisco, CA 94133.

5           6. Plaintiffs are informed and believe, and on that basis allege, that Dick Lee Restaurant  
6 ("Dick Lee Restaurant" or "the Restaurant"), which operates at 716 Jackson Street in San Francisco,  
7 is owned and operated in whole or in part by DICK LEE PASTRY, INC.

8           7. Plaintiffs are informed and believe, and on that basis allege, that the Restaurant is open  
9 from 9 AM until 7 or 8 PM, six days per week. It offers an all-you-can-eat buffet and serves dim sum  
10 and pastry throughout the day. Approximately eight employees work at the Restaurant at any given  
11 time.

12           8. Plaintiffs are informed and believe, and on that basis allege, that defendant YU is, and at  
13 all relevant times was, an individual residing in the City and County of San Francisco. YU is, and at  
14 all relevant times was, an owner, shareholder, officer and/or executive of DICK LEE PASTRY, INC.,  
15 and is and/or was responsible for employing workers for Dick Lee Restaurant and for exercising  
16 control over the wages, hours, or working conditions of the Restaurant's employees.

17           9. Plaintiffs are informed and believe, and on that basis allege, that defendant CHIU is, and  
18 at all relevant times was, an individual residing in the City and County of San Francisco. CHIU is,  
19 and at all relevant times was, an owner, shareholder, officer and/or executive of DICK LEE  
20 PASTRY, INC., and is and/or was responsible for employing workers for Dick Lee Restaurant and  
21 and for exercising control over the wages, hours, or working conditions of the Restaurant's  
22 employees.

23           10. Plaintiffs are ignorant of the true names and capacities of defendants DOES 1-10  
24 inclusive, and sue said defendants by such fictitious names. Plaintiffs will amend this Complaint to  
25 allege their true names and capacities when ascertained.

26           11. Plaintiffs are informed and believe, and on that basis allege, that in addition to acting on  
27 his or her own behalf as an individual, all of the acts and omission described in this Complaint by any  
28 defendant were duly performed by, and attributable to, all defendants, each acting as agent, employee,

1 alter ego and/or under the direction and control of the others, and such acts and omissions were  
2 within the scope of such agency, employment, alter ego, direction, and/or control. Any reference in  
3 this complaint to any acts of defendants shall be deemed to be the acts of each defendant acting  
4 individually, jointly, or severally. At all relevant times, each defendant had knowledge of and agreed  
5 to both the objectives and the courses of action, and took the acts described in this complaint pursuant  
6 to such agreements, resulting in the unlawful, unfair, and fraudulent business practices and damages  
7 to victims as described in this Complaint.

8 12. At all times relevant herein, the events and occurrences that give rise to this Complaint  
9 took place in the City and County of San Francisco.

### 10 GENERAL ALLEGATIONS

11 13. Sections 12R.4(a) and (b) of the MWO require Employers to pay their Employees no  
12 less than the minimum wage established in the MWO.

13 14. In 2006 the minimum wage under the MWO was \$8.82 per hour.

14 15. In 2007 the minimum wage under the MWO was \$9.14 per hour.

15 16. In 2008 the minimum wage under the MWO was \$9.36 per hour.

16 17. In 2009 and 2010 the minimum wage under the MWO was \$9.79 per hour.

17 18. In 2011 the minimum wage under the MWO is \$9.92 per hour.

18 19. Section 12R.3 of the MWO defines an "Employer" as "any person, as defined in  
19 Section 18 of the California Labor Code, including corporate officers or executives, who directly or  
20 indirectly or through an agent [or] any other person, including through the services of a temporary  
21 services or staffing agency or similar entity, employs or exercises control over the wages, hours or  
22 working conditions of any Employee."

23 20. Pursuant to Section 12R.3, "Employee" is defined as "any person who: (a) In a  
24 particular week performs at least two (2) hours of work for an Employer within the geographic  
25 boundaries of the City; and (b) Qualifies as an employee entitled to payment of a minimum wage  
26 from any employer under the California minimum wage law, as provided under Section 1197 of the  
27 California Labor Code and wage orders published by the California Industrial Welfare Commission,  
28 or is a participant in a Welfare-to-Work Program."

1           21. At all times relevant herein, Defendants were subject to the provisions of the MWO in  
2 that Defendants are persons, as defined in Labor Code Section 18, or corporate officers or executives,  
3 who directly or indirectly, or through an agent or any other person, employed, or exercised control  
4 over the wages, hours or working conditions of the Restaurant's employees.

5           22. Labor Code Section 1197 provides that "[t]he minimum wage for employees fixed by  
6 the [Industrial Welfare Commission ("IWC")] is the minimum wage to be paid to employees, and the  
7 payment of a less wage than the minimum so fixed is unlawful."

8           23. IWC Wage Order 5-2001 applies to all persons employed in the public housekeeping  
9 industry.

10           24. The public housekeeping industry includes "any industry, business, or establishment  
11 which provides meals, housing, or maintenance services whether operated as a primary business or  
12 when incidental to other operations in an establishment not covered by an industry order of the  
13 Commission, and includes, but is not limited to the following: (1) Restaurants, . . . cafeterias, . . . and  
14 all similar establishments where food in either solid or liquid form is prepared and served to be  
15 consumed on the premises." Section 2(P) of IWC Wage Order 5-2001.

16           25. Section 4 of Wage Order 5-2001 requires each employer to pay each employee no less  
17 than \$6.75 per hour for all hours worked effective January 1, 2002, no less than \$7.50 per hour for all  
18 hours worked effective January 1, 2007, and no less than \$8.00 per hour for all hours worked  
19 effective January 1, 2008.

20           26. Labor Code Section 510, and Section 3 of Wage Order 5-2001 require each employer to  
21 pay each employee one and one-half times the employee's regular rate of pay for all hours worked in  
22 excess of eight hours in any workday, more than 40 hours in any workweek, or the first eight hours  
23 on the seventh consecutive day of work. Those sections further provide that for any hours an  
24 employee works more than twelve hours in one day, or more than eight hours on the seventh  
25 consecutive day, the employee must be compensated at double the employee's regular rate of pay.

26           27. At all times relevant herein, Defendants Dick Lee Pastry, Inc. and Does 1 to 5 were  
27 subject to the provisions of Wage Order 5-2001 in that Dick Lee Pastry, Inc. and Does 1 to 5 are  
28 persons as defined by Labor Code Section 18 who directly or indirectly, or through an agent or any

1 other person, employed, or exercised control over the wages, hours or working conditions of the  
2 Restaurant's employees.

3 28. Labor Code Section 226 requires every employer to provide each employee "an  
4 accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the  
5 employee, . . . (5) net wages earned, . . . (9) all applicable hourly rates in effect during the pay period  
6 and the corresponding number of hours worked at each hourly rate by the employee," among other  
7 information.

8 29. Labor Code Section 223 provides: "Where any statute or contract requires an employer  
9 to maintain the designated wage scale, it shall be unlawful to secretly pay a lower wage while  
10 purporting to pay the wage designated by statute or by contract."

## 11 12 **WAGE THEFT ALLEGATIONS**

13 30. The San Francisco Office of Labor Standards Enforcement ("OLSE"), an agency  
14 empowered with the authority to enforce the MWO, received a complaint that Defendants had failed to  
15 pay employees minimum and overtime wages as required by the MWO and Wage Order 5-2001.

16 31. In response to receiving the complaint, the OLSE initiated an investigation into how the  
17 Defendants compensated all of their employees. On November 13, 2009, the OLSE notified  
18 Defendants in writing that it was investigating possible violations of the MWO.

19 32. During the time period October 1, 2006 through November 30, 2009 ("the 2006-2009  
20 Period"), Defendants violated state and local wage laws as follows:

### 21 **Fu Quan Wu**

22 33. Fu Quan Wu worked at Dick Lee Restaurant beginning March 1, 2003, and continued  
23 to work at the Restaurant as of November 30, 2009. During the 2006-2009 Period, he worked six days  
24 per week, eleven hours per day. He started work at 9:00 a.m., and ended at 9:00 p.m. He was given a  
25 one-hour lunch break. His salary was \$1100 per month, or \$550 semi-monthly.

26 34. Fu Quan Wu's compensation during the 2006-2009 Period amounted to approximately  
27 \$3.84 per hour. He worked between 18 and 66 overtime hours per pay period, but received no  
28 overtime premium.

1           35. In June 2010, the OLSE informed Defendants that it calculated back wages and interest  
2 owed to Fu Quan Wu at \$85,420.76. Upon information and belief, Defendants have not paid any of  
3 the back wages owed to Fu Quan Wu since they were informed of the amount by the OLSE.

4           **Xue Qing Wu**

5           36. Xue Qing Wu worked at Dick Lee Restaurant beginning in 2005, and continued to  
6 work at the Restaurant as of November 30, 2009. During the 2006-2009 Period, she worked six days  
7 per week, eleven hours per day. She started work at 9:00 a.m., and ended at 9:00 p.m. She was given  
8 a one-hour lunch break. She received \$1100 per month, or \$550 semi-monthly.

9           37. Xue Qing Wu's compensation during the 2006-2009 Period amounted to approximately  
10 \$3.84 per hour. She worked between 29 and 66 overtime hours per pay period, but received no  
11 overtime premium.

12           38. In June 2010, the OLSE informed Defendants that it calculated back wages and interest  
13 owed to Xue Qing Wu at \$87,465.29. Upon information and belief, Defendants have not paid any of  
14 the back wages owed to Xue Qing Wu since they were informed of the amount by the OLSE.

15           39. Xue Qing Wu quit working at the Restaurant by early 2011, because Defendants had  
16 reduced her hours to twelve hours per week.

17           **Yu Yin Yu**

18           40. Yu Yin Yu worked at Dick Lee Restaurant beginning September 17, 2000, and  
19 continued to work at the Restaurant as of November 30, 2009. During the 2006-2009 Period, she  
20 worked six days per week, eleven hours per day. She started work at 9:00 a.m., and ended at 9:00 p.m.  
21 She was given a one-hour lunch break. She received \$1120 per month, or \$560 semi-monthly.

22           41. Yu Yin Yu's compensation during the 2006-2009 Period amounted to approximately  
23 \$3.91 per hour. She worked between 23 and 66 overtime hours per pay period, but received no  
24 overtime premium.

25           42. In June 2010, the OLSE informed Defendants that it calculated back wages and interest  
26 owed to Yu Yin Yu at \$84,320.50. Upon information and belief, Defendants have not paid any of the  
27 back wages owed to Yu Yin Yu since they were informed of the amount by the OLSE.

28

1           **Qiao Yan Guan**

2           43. Qiao Yan Guan worked at Dick Lee Restaurant from June 20, 2006 to October 6, 2009.  
3 She worked six days per week, eleven hours per day. From June 20, 2006 until April 7, 2008, she  
4 worked from 6:30 a.m. to 1:00 p.m., then again from 4:30 p.m. to 9:00 p.m. From April 8, 2008 until  
5 October 6, 2009, she started work at 9:00 a.m., and ended at 9:00 p.m., with a one-hour lunch break at  
6 3:30 p.m.

7           44. Qiao Yan Guan received \$1100 per month, or \$550 semi-monthly.

8           45. Qiao Yan Guan's compensation from June 20, 2006 to October 6, 2009, amounted to  
9 approximately \$3.84 per hour. She worked between 29 and 66 overtime hours per pay period, but  
10 received no overtime premium.

11           46. In June 2010, the OLSE informed Defendants that it calculated back wages and interest  
12 owed to Qiao Yan Guan at \$83,937.32. Upon information and belief, Defendants have not paid any  
13 of the back wages owed to Qiao Yan Guan since they were informed of the amount by the OLSE.

14           **Qun Cou Wu**

15           47. Qun Cou Wu worked at Dick Lee Restaurant from December 15, 2006 until February  
16 20, 2008. She worked six days per week, fourteen hours per day. She started work at 9:00 a.m., and  
17 ended at 12:00 a.m. She worked from 9 a.m. to 3:30 p.m. in the Restaurant, then worked from 4:30  
18 p.m. until 12:00 a.m. at Defendants Yu and Chiu's house as a live-in maid. Qun Cou Wu was fired  
19 after she took a trip to China to visit her ill mother.

20           48. She received \$1100 per month, or \$550 semi-monthly.

21           49. Qun Cou Wu's compensation during the period December 15, 2006 until February 20,  
22 2008, amounted to approximately \$3.02 per hour. She worked between 40 and 76 overtime hours per  
23 pay period, but received no overtime premium. She worked between 16 and 28 double time hours per  
24 pay period, but received no double time premium.

25           50. In June 2010, the OLSE informed Defendants that it calculated back wages and interest  
26 owed to Qun Cou Wu at \$58,867.93. Upon information and belief, Defendants have not paid any of  
27 the back wages owed to Qun Cou Wu since they were informed of the amount by the OLSE.

1           **Zhong Jiao Wu**

2           51. Zhong Jiao Wu worked at Dick Lee Restaurant from August 1, 2009 until November  
3 16, 2009. She worked six days per week, thirteen hours per day. She started work at 8:00 a.m., and  
4 ended at 10:00 p.m. She worked from 8:00 a.m. to 8:00 p.m. in the Restaurant, then worked until  
5 10:00 p.m. at Defendants Yu and Chiu's house as a live-in maid. She was fired on the day the OLSE  
6 conducted its first site visit to the Restaurant. On information and belief Defendant Yu fired her to  
7 prevent her from cooperating with the OLSE investigation.

8           52. Zhong Jiao Wu received \$1100 per month, or \$550 semi-monthly.

9           53. Zhong Jiao Wu's compensation during the period August 1, 2009 to November 16,  
10 2009, amounted to approximately \$3.25 per hour. She worked between 60 and 76 overtime hours per  
11 pay period, but received no overtime premium. She worked between 12 and 14 hours double time  
12 hours per pay period, but received no double time premium.

13           54. In June 2010, the OLSE informed Defendants that it calculated back wages and interest  
14 owed to Zhong Jiao Wu at \$11,802.81. Upon information and belief, Defendants have not paid any of  
15 the back wages owed to Zhong Jiao Wu since they were informed of the amount by the OLSE.

16           **Hui Fang Wu**

17           55. Hui Fang Wu worked at the Restaurant from April 1, 2005 until April 14, 2006. She  
18 worked six days per week, eleven hours per day. She started work at 9:00 a.m., and ended at 9:00 p.m.  
19 She was given a one-hour lunch break. She received \$1100 per month, or \$550 semi-monthly.

20           56. Hui Fang Wu's compensation during the period April 1, 2005 until April 14, 2006,  
21 amounted to approximately \$3.84 per hour. She worked between 40 and 63 overtime hours per pay  
22 period, but received no overtime premium.

23           57. In June 2010, the OLSE informed Defendants that it calculated back wages and interest  
24 owed to Hui Fang Wu at \$32,268.25. Upon information and belief, Defendants have not paid any of  
25 the back wages owed to Hui Fang Wu since they were informed of the amount by the OLSE.

26           58. Plaintiffs are informed and believe, and on that basis allege, that Defendants continued  
27 to pay its employees less than the minimum wages required by state and local law beyond the 2006-  
28 2009 Period.

1           59. Plaintiffs are informed and believe, and on that basis allege, that throughout the four  
2 years preceding the filing of this Complaint, Defendants employed other workers under the same or  
3 similar terms and conditions as described in the preceding paragraphs. However, the identities of  
4 these workers are not presently known to Plaintiffs. Plaintiffs are informed and believe, and on that  
5 basis allege, that Defendants also have violated the MWO and Wage Order 5-2001 with respect to  
6 these unidentified workers as well.

7           60. Plaintiffs are informed and believe, and on that basis allege, that Defendants reduced  
8 below full time the hours of employees who cooperated with the OLSE's investigation. Within a  
9 month of the OLSE initiating its investigation, Defendants reduced Fu Quan Wu's, Xue Qing Wu's,  
10 and Yu Yin Yu's scheduled hours to approximately 30 per week. Defendants reduced their scheduled  
11 hours again in October 2010, slightly over a month after Defendants' representative met with the  
12 OLSE to discuss the back wages owed. In November 2010, Defendants reduced those employees'  
13 schedules to 12 to 15 hours per week. Meanwhile, Plaintiffs are informed and believe that other  
14 employees, who were not named in the OLSE's audit, work more than forty hours per week.

#### 15           **Deceptive Pay Practices Allegations**

16           61. Defendant YU hires and fires the Restaurant's employees. Defendant YU sets the  
17 employees' schedules and rate of pay.

18           62. Defendant CHIU gives the Restaurant's employees their pay.

19           63. Defendants pay the Restaurant's employees by check and cash. Each pay period,  
20 Defendants paid only a portion of employees' hours worked by check at the San Francisco minimum  
21 wage, then paid the remaining amount to total the semi-monthly amount due by cash. For example, in  
22 2008 the San Francisco minimum wage was \$9.36 per hour. Defendants' payroll records reflect that  
23 Claimant Qiao Yan Guan was paid \$365.04 per pay period for 39 hours of work (39 hrs x \$9.36 =  
24 \$365.04) by check. Defendants' records do not reflect that she was given a separate cash payment of  
25 \$184.96 per pay period (\$550 - \$365.04 = \$184.96). Defendants gave the cash payments to claimant  
26 Guan in a white envelope, on which they wrote the cash amount. When the minimum wage increased  
27 to \$9.79 per hour in 2009, her 39 hours paid by check amount increased to \$381.81 (39 hrs x \$9.79 =  
28 \$381.81), and her cash paid amount decreased to \$168.19. (\$550 - \$381.81 = \$168.19).

1           64. Plaintiffs are informed and believe, and on that basis allege that Defendants paid their  
2 employees in the manner described above to conceal the true number of hours employees worked, and  
3 the fact that they paid employees below the minimum wage.

4           65. Defendants instructed the employees to lie about how many hours they actually  
5 worked. Defendants gave employees a piece of paper containing a three-hour schedule, telling them  
6 that if the government came to inspect, and they should tell the government that the schedule on the  
7 piece of paper was their work schedule. For example, Claimant Qiao Yan Guan was told by the  
8 Defendants to say her work schedule was from 10 AM to 1 PM. Claimant Fu Quan Wu was told to  
9 say his schedule was from 1 PM to 4 PM.

10          66. Defendants do not keep accurate time records to show when employees begin and end  
11 each work period.

12          67. Defendants do not keep accurate payroll records documenting wages paid to their  
13 employees.

14          68. Defendants provide employees with itemized statements that reflect only a portion of  
15 the hours worked and wages earned, and state a false hourly wage.

16  
17           **FIRST CAUSE OF ACTION FOR VIOLATION OF SAN FRANCISCO MINIMUM WAGE**  
18           **ORDINANCE FOR FAILURE TO PAY MINIMUM WAGE**

19           San Francisco Administrative Code Section 12R.4, 12R.7

20           Brought by Plaintiff City and County of San Francisco Against All Defendants

21          69. Plaintiffs incorporate herein each and every allegation contained in Paragraphs 1  
22 through 68, inclusive, of this Complaint as though fully set forth herein.

23          70. At all times relevant herein, Defendants violated Section 12R.4 of the MWO by failing  
24 to pay their employees the required minimum wages.

25          71. As a result of the failure of Defendants to comply with the provisions of the MWO, the  
26 employees of Dick Lee Restaurant have been injured directly through the loss of wages in an exact  
27 amount to be determined at trial.  
28

1           72. Each employee or person whose rights under the MWO were violated is entitled to  
2 payment of liquidated damages in the amount of \$50 for each day or portion thereof that the violation  
3 occurred or continued, pursuant to SF Administrative Code Section 12R.7(c).

4           73. Each employee or person whose rights under the MWO were violated is entitled to  
5 reinstatement and/or injunctive relief, pursuant to SF Administrative Code Section 12R.7(c).

6           74. Each employee who is owed wages under the MWO is entitled to interest on all due  
7 and unpaid wages at the rate of ten percent per annum, from the date that the wages were due and  
8 payable to the date the wages are paid in full, pursuant to SF Administrative Code Section 12R.7(d).

9           75. The OLSE is entitled to an award of up to \$50 for each day or portion thereof and for  
10 each person as to whom the violation occurred or continued, pursuant to SF Administrative Code  
11 Section 12R.7(b).

12  
13           **SECOND CAUSE OF ACTION FOR UNFAIR, UNLAWFUL, AND FRAUDULENT**  
14                                   **BUSINESS PRACTICES**

15                                   Business and Professions Code Sections 17200, *et seq.*

16                                   Brought by Plaintiff People of the State of California Against All Defendants

17           76. Plaintiff hereby incorporates by reference paragraphs 1 through 75 as though fully set  
18 forth herein.

19           77. Plaintiff, acting to protect the public as consumers and competitors from unlawful,  
20 unfair, and fraudulent practices committed by Defendants, brings this cause of action in the public  
21 interest in the name of the People of the State of California, pursuant to Business and Professions  
22 Code Sections 17200-17210.

23           78. Defendants transact business in the form of ownership, management, and operation of  
24 Dick Lee Restaurant, in the City and County of San Francisco, State of California. The violations of  
25 law described herein have been and are being carried out wholly or in part within the City and County  
26 of San Francisco.

27           79. Through the conduct described above, Defendants have engaged in the following  
28 unlawful, unfair, and fraudulent business practices prohibited by the Business and Professions Code  
Sections 17200-17210:

1           A. Violating the San Francisco Minimum Wage Ordinance by failing to pay their  
2 employees minimum wages as required by that Ordinance;

3           B. Violating the San Francisco Minimum Wage Ordinance by failing to maintain  
4 adequate and accurate payroll records, including records of hours their employees worked  
5 and wages their employees received;

6           C. Violating the San Francisco Minimum Wage Ordinance by discriminating or  
7 taking adverse actions against employees in retaliation for exercising rights protected under  
8 that Ordinance;

9           D. Violating Labor Code Section 1197 and Wage Order 5-2001, Section 4, by failing  
10 to pay their employees minimum wages as required by those provisions;

11           E. Violating Labor Code Section 510 and Wage Order 5-2001, Section 3, by failing  
12 to pay their employees overtime and double time premiums as required by those  
13 provisions;

14           F. Violating Labor Code Section 226 by failing to provide their employees with  
15 accurate itemized statements showing correct wages earned, total hours worked by the  
16 employee, and the actual hourly rates in effect during the pay period and the corresponding  
17 number of hours worked at each hourly rate by the employee;

18           G. Violating Labor Code Section 223 by secretly paying a wage lower than that  
19 required by law, while purporting to pay the required wage.  
20

21  
22           80. Plaintiff is informed and believes, and on that basis alleges, that as a direct and  
23 proximate result of the foregoing acts and practices, Defendants have received and/or continue to  
24 receive income or other benefits, which they would not have received if they had not engaged in the  
25 violations of Business and Professions Code Section 17200, *et seq.*, described in this Complaint.

26           81. Plaintiff is informed and believe, and on that basis alleges, that as a direct and  
27 proximate result of the foregoing acts and practices, Defendants were able to unfairly compete with  
28 other restaurants in the State of California.





# San Francisco Workers: KNOW YOUR RIGHTS!

All employees performing work in San Francisco, including part-time and temporary employees, have the right:

- To be paid the 2011 San Francisco **Minimum Wage** rate of **\$9.92/hour**
- To earn and take **paid sick leave** for their own medical care or to aid or care for a family member or designated person
- Employers with 20 or more employees (and nonprofits with 50 or more employees) must spend a minimum amount (set by law) on **health care** for each employee who works 8 or more hours per week in San Francisco

*It is against the law for an employer to punish an employee who asks for these rights.*

San Francisco workers are entitled to these rights regardless of immigration status. If you are not receiving these rights, you can file a complaint with the Office of Labor Standards Enforcement.

## THE FOLLOWING ORGANIZATIONS CAN PROVIDE YOU WITH CONFIDENTIAL ASSISTANCE:

- La Raza Centro Legal: (415) 575-3500
- Chinese Progressive Association: (415) 391-6986
- Filipino Community Center: (415) 333-6267
- Pride At Work: (415) 410-7462

San Francisco Office of Labor Standards Enforcement  
City Hall Room 430  
San Francisco, CA 94102  
(415) 554-6292  
[www.sfgov.org/olse](http://www.sfgov.org/olse)

